STATE OF MICHIGAN

COURT OF APPEALS

ALEXANDER L. FRIEND,

Plaintiff-Appellee,

v

JULIA D. FRIEND,

Defendant-Appellant.

UNPUBLISHED
May 21, 2009

No. 284330
Houghton Circuit Court
LC No. 06-013298-DM

Before: Whitbeck, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

Defendant Julia Friend appeals as of right from a judgment of divorce. On appeal, she challenges the trial court's rulings with respect to property distribution, spousal support, attorney fees, and parenting time. We affirm.

I. Basic Facts And Procedural History

Plaintiff, Alexander Friend, and Julia Friend married on June 5, 1982, in North Carolina. The marriage produced two children. In July 2006, after nearly 25 years of marriage, Alexander Friend filed a complaint for divorce. A four-day trial commenced in August 2007. Following the trial, the trial court entered a 22-page opinion and order. With respect to parenting time, the trial court determined that the children should participate in counseling with Dr. Eric Alsterberg in Macomb County to facilitate parenting time with Alexander Friend. The trial court then set forth a parenting time schedule that included overnight visitation with Alexander Friend.

Regarding the marital estate, the trial court determined that the stocks and cash that Alexander Friend received from his brother and father constituted separate property not part of the marital estate. The trial court determined that the marital estate should be divided equally between the parties. The trial court ordered that Alexander Friend's retirement funds be divided equally between the parties as of August 7, 2007, the first day of trial. The trial court stated that there was no need to address Julia Friend's retirement funds, which she liquidated following the parties' separation.

Regarding certain sums of money that Julia Friend's father loaned her after the parties' separation, the trial court declined to award Julia Friend funds from the marital estate to reimburse her father. The trial court reasoned that Julia Friend made no attempt during the pendency of the proceeding to seek temporary spousal support and that Alexander Friend

complied with court-imposed child support obligations. Therefore, the trial court determined, any loans from third parties were solely Julia Friend's responsibility to repay.

With respect to the marital home, the trial court awarded it to Alexander Friend because he was currently living in the home and paying the mortgage payments. The trial court determined, however, that Julia Friend was entitled to one-half of the equity in the marital home as of the first day of trial, calculated using the home's appraised value. The trial court required that Alexander Friend pay Julia Friend her portion of the equity when the home is sold or within 120 days after the judgment of divorce is entered.

Further, the trial court ordered rehabilitative spousal support for a five-year period to encourage Julia Friend to seek employment and become self-sufficient. The trial court awarded Julia Friend $1,250 monthly spousal support for the first two years following entry of the judgment of divorce, $1,000 monthly spousal support for the third year, and $500 monthly spousal support for the fourth and fifth years. Finally, regarding Julia Friend's attorney fees, the trial court ordered that Alexander Friend pay Julia Friend's attorney fees in the amount of $3,000.

In October 2007, Alexander Friend filed a motion for clarification of the trial court's decision, asking the trial court to clarify how the parties should determine Julia Friend's portion of the equity in the marital home. At a hearing on the motion, the trial court stated that the best evidence available regarding the value of the home was its appraised value of $235,000. The trial court directed that the outstanding mortgage and home equity loan balances be deducted from this figure and the remaining difference split equally between the parties. According to the trial court, this amount would constitute Julia Friend's equitable interest in the home.

In November 2007, the trial court entered a uniform child support order, requiring Alexander Friend to pay Julia Friend $1,725 monthly child support. On the same day, the trial court entered a spousal support order and judgment of divorce in accordance with its previous opinion and oral ruling at the hearing on Alexander Friend's motion for clarification.

Following various procedural motions, hearings, and trial court rulings, in March 2008, Julia Friend filed her claim of appeal, and at a later March hearing, the trial court indicated that it did not have jurisdiction to change custody of the children because Julia Friend had filed a claim of appeal. The trial court granted Alexander Friend's motion for an order to show cause and entered an order requiring Julia Friend to appear on April 18, 2008.

Julia Friend failed to personally appear before the trial court on April 18, 2008, but appeared by speakerphone instead. In an order entered following the hearing, trial court held that Julia Friend's justification for refusing to attend counseling with Dr. Alsterberg was insufficient and that Julia Friend failed to make reasonable efforts to facilitate Alexander Friend's parenting time. The trial court further stated that it appeared that Julia Friend was "looking for reasons not to comply" with the court's orders. The trial court held Julia Friend in contempt. The trial court again ordered that the parties make arrangements for themselves and the children to consult with Dr. Alsterberg within ten days.

II. Distribution Of The Marital Estate

A. Standard Of Review

Julia Friend challenges several of the trial court's rulings with respect to distribution of the marital estate. We review a trial court's dispositional rulings to determine if they are fair and equitable in light of the circumstances.[1] This Court should affirm a dispositional ruling unless it is left with the firm conviction that the division is inequitable.[2] Further, this Court reviews for clear error a trial court's findings of fact, including whether a particular asset constitutes marital or separate property.[3] "A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been committed."[4]

B. Alexander Friend's Inheritance

Julia Friend first argues that the trial court erred by determining that Alexander Friend's inheritance from his father and stock received from his brother were separate, nonmarital assets. She also contends that the trial court erred by failing to invade those assets and award her a portion thereof.

"In dividing marital assets, the goal is to reach an equitable division in light of all the circumstances."[5] The division need not be mathematically equal, but the trial court must explain any significant departure from congruence.[6] Factors to consider when dividing marital property include:

> (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity.[7]

Although marital property is subject to division, the parties' separate assets generally may not be invaded.[8] A trial court may, however, invade the separate property of a spouse if one of two statutory exceptions is met.[9] Under MCL 552.23(1),[10] a party's separate property may be

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[1] *Baker v Baker*, 268 Mich App 578, 582; 710 NW2d 555 (2005).

[2] *Id*.

[3] MCR 2.613(C); *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002); *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992).

[4] *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

[5] *McNamara, supra* at 188.

[6] *Id*.

[7] *Sparks, supra* at 159-160.

[8] *McNamara, supra* at 183.

[9] *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997).

invaded if, after division of the marital estate, the property "'awarded to either party [is] insufficient for the suitable support and maintenance of either party[.]'"[11] In other words, the "invasion is allowed when one party demonstrates additional need."[12] Further, under MCL 552.401,[13] a trial court may invade the separate property of a spouse "when the other spouse 'contributed to the acquisition, improvement, or accumulation of the property.'"[14]

Here, the trial court did not clearly err in finding that the stock that Alexander Friend received from his brother, Steven Friend, was Alexander Friend's separate property. The trial court determined that Steven Friend gave Alexander Friend stock associated with a company that Steven Friend disbanded and that the gift was intended only for Alexander Friend. The evidence supports the trial court's determination. Alexander Friend testified that Steven Friend gave him stock in a company that purchased another company that Steven Friend had owned. Alexander Friend also testified that he held the stock in his name alone. In addition, Steven Friend testified that he gave the stock to Alexander Friend alone and was aware of the parties' marital problems at the time that he gifted the stock in 2000. Thus, the trial court's determination that the stock was Alexander Friend's separate property is not clearly erroneous.

The evidence also supports the trial court's determination that Alexander Friend's inheritance from his father is Alexander Friend's separate property. Steven Friend testified that both he and Alexander Friend received equal shares of their father's estate and that they were the only two persons mentioned in their father's will. Alexander Friend testified that although he

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(…continued)

[10] MCL 552.23(1) provides:

> Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage as are committed to the care and custody of either party, the court may further award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.

[11] *Reeves*, *supra* at 494, quoting MCL 552.23(1).

[12] *Id*.

[13] MCL 552.401 provides:

> The circuit court of this state may include in any decree of divorce or of separate maintenance entered in the circuit court appropriate provisions awarding to a party all or a portion of the property, either real or personal, owned by his or her spouse, as appears to the court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property. The decree, upon becoming final, shall have the same force and effect as a quitclaim deed of the real estate, if any, or a bill of sale of the personal property, if any, given by the party's spouse to the party.

[14] *Reeves*, *supra* at 494-495, quoting MCL 552.401.

sometimes used funds inherited from his father for marital expenses, the funds were maintained in a separate account in his name only. Although Alexander Friend at one time contemplated adding Julia Friend's name to the account in the future, that apparently was never done. Thus, the trial court's factual findings are not clearly erroneous.

Julia Friend nevertheless argues that the trial court should have invaded Alexander Friend's separate assets under MCL 552.401 because she contributed to Alexander Friend's acquisition of the assets. She argues that Alexander Friend was estranged from his father for many years and that she was instrumental in Alexander Friend reestablishing a relationship with his father. She contends that, but for her efforts to repair Alexander Friend's relationship with his father, he would not have received the inheritance. The trial court's finding that Julia Friend's theory was speculative is not clearly erroneous. As the trial court noted, the evidence showed that both Alexander Friend and Steven Friend were estranged from their father and that, regardless, their father bequeathed his estate to them to divide equally. No evidence was presented that Julia Friend was instrumental in repairing Steven Friend's relationship with his father, yet Steven Friend inherited the same amount as Alexander Friend. Thus, it is speculative to conclude that Julia Friend's efforts contributed to Alexander Friend's acquisition of the inheritance to warrant invading the asset under MCL 552.401.

Julia Friend also appears to argue that she was also instrumental in Alexander Friend's acquisition of the stock from his brother, but she does not explain her efforts in this regard. Further, the record fails to establish that Julia Friend contributed in any way toward Alexander Friend's acquisition of the stock. Thus, the evidence does not establish the requisites for invading this asset under MCL 552.401.

Julia Friend also argues that the trial court erred by not invading Alexander Friend's separate property under MCL 552.23 because her share of the marital estate is insufficient to maintain and support her and their children. After reviewing the record, we conclude that Julia Friend has failed to demonstrate additional need, justifying the invasion of Alexander Friend's separate property under MCL 552.23.[15] The trial court awarded Julia Friend half of Alexander Friend's retirement accounts, half of the equity in the marital home, all of the personal property in Julia Friend's possession, and half of the parties' liquid assets. In addition, the trial court did not offset from Julia Friend's share nearly $15,000 that Julia Friend received from her retirement account, which she cashed out during the divorce proceeding, and required Alexander Friend to assume all of the marital debt.

Alexander Friend was also ordered to pay Julia Friend $1,725 in monthly child support and $1,250 in monthly spousal support for two years, followed by monthly spousal support of $1,000 for one year, and $500 a month for an additional two years. Thus, Alexander Friend must pay Julia Friend nearly $3,000 each month for a two-year period and lesser amounts thereafter. Although Julia Friend claims that this amount is insufficient, it is sufficient for the suitable support and maintenance of Julia Friend and the children. Julia Friend's excessive spending habits were discussed during trial, including that she spent nearly $76,000 between September

[15] See *Reeves*, *supra* at 494.

2006 and the first day of trial in August 2007, not including the $1,600 monthly child support that Alexander Friend paid Julia Friend during the divorce proceedings. The record also shows that Julia Friend made imprudent financial decisions, such as enrolling the children in a school that cost approximately $13,000 a year for both children. Because Julia Friend was unable to afford to pay the tuition, her father borrowed the money to pay the tuition and expected repayment from Julia Friend.

Finally, the record shows that although Julia Friend prefers not to work outside the home, she is fully capable of reintegrating into the workforce and financially supporting herself. She possesses both undergraduate and master's degrees in religious studies and had utilized those degrees previously when she lectured and taught at the Mississippi University for Women and Mississippi State University. Thus, although Julia Friend maintains that her degrees are not likely to translate into a source of income, the record shows that she had utilized her degrees in her previous employment. In addition, Julia Friend is only two years older than Alexander Friend and nothing in the record indicates that her health, or any other factor, prevents her from working. Rather, the only factor preventing her from seeking full- or part-time employment is her stated belief that she should not have to work and that Alexander Friend should be required to provide for her indefinitely. The record fails to show that invading Alexander Friend's separate property was warranted under MCL 552.23(1).

C. Pension Accounts

Julia Friend next argues that the trial court erred by failing to employ the coverture factor in dividing Alexander Friend's Federal Employees' Retirement System and Mississippi State Employees' Retirement pension accounts. Julia Friend's argument is misplaced. The coverture factor is a method of calculating "the portion of a pension that is attributable to a marriage when the period in which the pension was earned includes time in which the employee spouse was not married to the other party."[16] Here, it is undisputed that all of Alexander Friend's pension benefits accrued during the parties' marriage. Therefore, the coverture factor is inapplicable in determining Julia Friend's portion of Alexander Friend's pension benefits.

Julia Friend also argues that the trial court erred by denying her request to secure her portion of the Mississippi State plan by implementing a spousal support reservation designed to compel Alexander Friend to pay her share of the pension benefits when they are payable. According to Julia Friend, the Mississippi State plan does not honor qualified domestic relations orders to effectuate a spouse's receipt of benefits. The trial court did not err by denying Julia Friend's request. Julia Friend's entitlement to her share of the plan benefits is set forth in both the opinion following trial and the judgment of divorce. A separate spousal support provision is not necessary.

D. The Marital Home

Julia Friend next argues that the trial court erred in determining that the fair market value of the marital home is $235,000. This finding is not clearly erroneous. The professional

[16] *Vander Veen v Vander Veen*, 229 Mich App 108, 111; 580 NW2d 924 (1998).

appraisal that Alexander Friend provided supports this value. The trial court opined that although the home was listed with a realtor for $259,000, it might not sell at that price. In the meantime, Alexander Friend was living in the home and paying the mortgage payments. Because the trial court could not predict if and when the house would sell and for what price, it valued the home at its appraised value. The trial court's finding regarding the fair market value of the home is not clearly erroneous.

Julia Friend also argues that the trial court erred by deducting the entire amount of the parties' home equity line of credit from the fair market value of the home to determine the equitable amount owed to Julia Friend. The trial court's determination is fair and equitable considering that Julia Friend liquidated her $15,000 pension account during the parties' separation and that the trial court did not offset this amount from her property distribution. The evidence also showed that Alexander Friend settled Julia Friend's credit card debt, which amounted to approximately $20,000, for $4,400. Although Alexander Friend paid the debt after the parties separated, the trial court did not deduct $4,400 from Julia Friend's property distribution. Finally, the trial court held Alexander Friend responsible for all of the parties' marital debt. Considering these additional circumstances, the trial court's decision to require that the entire balance of the home equity loan be deducted from the fair market value of the marital home to determine Julia Friend's equity in the home is fair and equitable.[17]

E. Marital Debt

Julia Friend next argues that the trial court failed to equitably apportion the marital debt by failing to require that Alexander Friend contribute toward the debt that Julia Friend owed her father, John Downs. Again, we conclude that the trial court's ruling is fair and equitable under the circumstances. The trial court correctly noted that Julia Friend did not request temporary spousal support during the pendency of the case and that Alexander Friend fully complied with his nearly $1,600 monthly child support obligation. In addition to collecting child support, Julia Friend received nearly $15,000 by liquidating her pension. Rather than seek employment in an effort to support herself financially, Julia Friend opted to borrow money from her father and incur significant credit card debt. As is evident from Downs' testimony, his summary of the amount allegedly owed him contains various omission and inaccuracies. Further, the trial court did not require Julia Friend to assume any of the significant marital debt. Under the circumstances, the trial court's decision that Julia Friend be solely responsible for any debt to her father is fair and equitable.

F. Frequent Flyer Miles

Julia Friend next argues that the trial court failed to equitably divide the parties' frequent flyer miles. The trial court awarded each party his or her own personal property. This ruling is fair and equitable, especially considering that Alexander Friend traveled significantly in an

[17] *Baker*, *supra* at 582.

attempt to use his parenting time, and the trial court did not order that his travel expenses be reimbursed. Because the trial court's determination is not inequitable, we affirm the ruling.[18]

III. Spousal Support

A. Standard Of Review

Julia Friend challenges the trial court's spousal support determination. We review for an abuse of discretion a trial court's spousal support award.[19] An abuse of discretion exists when the trial court's decision is outside the range of reasonable and principled outcomes.[20] Further, we review for clear error a trial court's findings of fact regarding spousal support.[21]

B. Legal Standards

The main objective of a spousal support award is to balance the incomes and needs of the parties such that neither party will be impoverished.[22] An award of spousal support should be just and reasonable under the circumstances of the case.[23] Factors that a trial court should consider in determining whether an award is just and reasonable include:

> (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the health of the parties, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity.[24]

C. Applying The Standards

The trial court awarded Julia Friend spousal support of $1,250 a month for the first two years following entry of the judgment of divorce, $1,000 a month for the third year, and $500 a month for the fourth and fifth years. We conclude that the trial court's spousal support award is not an abuse of discretion. Contrary to Julia Friend's argument that she lacks training and education, she possesses both a bachelor's and a master's degree. As the trial court specifically

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[18] *Id*.

[19] *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

[20] *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

[21] *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003).

[22] *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003); *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

[23] *Korth*, *supra* at 289; *Moore*, *supra* at 654.

[24] *Gates*, *supra* at 435-436, quoting *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

recognized, although Julia Friend has not worked outside the home since her oldest child was born, she has earning potential by virtue of her education. While Julia Friend maintains that her education does not lend itself to economic self-sufficiency, she previously utilized her degrees in teaching and lecturing positions. Further, although Julia Friend argues that her employment prospects are limited because of her advanced age, she is only two years older than Alexander Friend and no evidence was presented during trial of any health problems that would preclude her from working.

The most significant obstacle to Julia Friend obtaining economic self-sufficiency appears to be her repeatedly expressed belief that she should not be required to work and that Alexander Friend should be obligated to support her. The trial court specifically stated that its spousal support award was rehabilitative and an attempt to encourage Julia Friend to obtain financial self-sufficiency so that she would not be dependent on others for her support. Further, the five-year period during which Julia Friend will collect spousal support is a sufficient amount of time for her to reintegrate into the workforce. The trial court's spousal support determination does not constitute an abuse of discretion.

D. Alimony In Gross

Julia Friend also argues that the trial court erred by designating her spousal support as "alimony in gross," which is nonmodifiable, rather than periodic alimony, which is modifiable. "Although the circuit court has the authority to modify an alimony award upon a showing of a change in circumstances, an exception exists for alimony in gross, which is nonmodifiable absent a showing of fraud."[25] If a spousal support award is a lump sum or a definite sum to be paid in installments, it is properly characterized as alimony in gross.[26] "This term is somewhat misleading, because alimony in gross is not really alimony intended for the maintenance of a spouse, but rather is in the nature of a division of property."[27] On the other hand, if spousal support installment payments are subject to a contingency, such as death or remarriage, payments are more in the nature of maintenance payments and are properly characterized as periodic alimony subject to modification.[28]

Here, the record shows that the trial court intended to award alimony in gross. The trial court awarded a definite sum to be paid in installments, and did not impose any contingency on the payments.[29] Further, the record evidences the trial court's intent that the purpose of the spousal support payments be rehabilitative, to provide for Julia Friend's support until she could

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[25] *Bonfiglio v Pring*, 202 Mich App 61, 63; 507 NW2d 759 (1993), citing MCL 552.28.

[26] *Staple v Staple*, 241 Mich App 562, 566; 616 NW2d 219 (2000).

[27] *Id*.

[28] *Id*.

[29] See *Staple*, *supra* at 566; *Bonfiglio*, *supra* at 65.

obtain employment and achieve economic self-sufficiency.[30] Therefore, the trial court properly characterized the spousal support award as alimony in gross.

IV. Attorney Fees

A. Standard Of Review

Julia Friend argues that the trial court failed to award her sufficient attorney fees and that this Court should award her attorney fees to assist her in prosecuting this appeal. We review for an abuse of discretion a trial court's decision regarding an award of attorney fees.[31]

B. Legal Standards

Attorney fees in a divorce action are not recoverable as a matter of right.[32] Rather, they should be awarded only when necessary to preserve a party's ability to prosecute or defend a suit.[33] "They may also be awarded when the party requesting payment has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation."[34] Further, "[a] party may not be required to invade her assets to satisfy attorney fees when she is relying on the same assets for her support."[35]

The trial court did not abuse its discretion by awarding Julia Friend attorney fees in the amount of $3,000 because the only evidence presented during trial regarding Julia Friend's attorney fees was her father's testimony that he paid Julia Friend's attorney $3,000 as a retainer. Although Julia Friend averred in a posttrial motion that she was in need of a further attorney fee award to enable her to defend this action and prosecute her claims, she failed to submit any evidence supporting her attorney fee request. Similarly, she asserts in this Court that her attorney fees incurred to date exceed $40,000, but has not offered any documentary evidence in support of her claim. Although she asks this Court to "award her the total sum outright," her failure to substantiate her request for allegedly outstanding attorney fees precludes an attorney fee award.

Further, it is evident from the posttrial activity in the trial court that Julia Friend is responsible for much of the posttrial litigation costs. The record shows that much of these costs are related to Julia Friend's repeated refusal to allow Alexander Friend to visit the children in violation of the trial court's orders. Julia Friend has also repeatedly refused to comply with the trial court's orders requiring her and the children to consult with Dr. Erik Alsterberg. Julia

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[30] See *Staple*, *supra* at 566; *Bonfiglio*, *supra* at 65.

[31] *Olson*, *supra* at 634; *Gates*, *supra* at 437-438.

[32] *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001).

[33] *Gates*, *supra* at 438; *Stoudemire*, *supra* at 344.

[34] *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997).

[35] *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993).

Friend's conduct resulted in the trial court holding her in contempt. Thus, the record indicated that Julia Friend is responsible for much of the posttrial litigation expenses.

Moreover, as previously discussed, the record establishes Julia Friend's refusal to seek employment, both during the parties' separation and after their divorce. Thus, any inability to pay her attorney fees is, to a large extent, a product of her choices made since the parties' separation. In sum, the record does not show that a further attorney fee award is necessary for Julia Friend to prosecute her claims.[36]

V. Parenting Time

A. Standard Of Review

Julia Friend challenges the trial court's parenting time determinations. "Although appellate review of parenting-time orders is de novo, this Court must affirm the trial court unless its findings of fact were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue."[37]

B. Legal Standards

Pursuant to MCL 722.27a(1), "[p]arenting time shall be granted in accordance with the best interests of the child." MCL 722.27a(1) further provides:

> It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.

C. Applying The Standards

Julia Friend contends that the trial court erred by failing to heed the recommendations of Jania Sommers, the children's counselor in South Carolina. This argument lacks merit. Sommers asserted that it was important for the children to have a healthy relationship with Alexander Friend and that she encouraged them to go with Alexander Friend to New York to spend the 2006 Thanksgiving holiday weekend. She favored normal, regular visitation time between Alexander Friend and the children, including overnights, and recommended that Alexander Friend and the children participate in counseling together. Although Sommers opined that a counselor in South Carolina would be preferable to a counselor in Michigan because of the children's' mistrust stemming from their psychological assessment with Dr. Dorothy Kahler in Michigan, the trial court determined that it was time to allow Alexander Friend to have some input in this regard. The trial court explained:

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[36] *Gates*, *supra* at 438; *Stoudemire*, *supra* at 344.

[37] *Berger v Berger*, 277 Mich App 700, 716; 747 NW2d 336 (2008); see also MCL 722.28.

> The children have been seeing Ms. Sommers at mother's discretion for a considerable period. Such treatment has not resulted in an abatement or reduction of parenting time problems. Change, or at least supplementation, is therefore in the Court's opinion, warranted. Mother has had to this point control over the choice of counselors. It is now time for father to have some input in that regard, in the hopes that more progress on the issue of parenting time may be achieved. Father testified that he has located an individual, who he believes is qualified to provide counseling to his children. Counselor Eric Alsterberg practices in Malcomb [sic] County, Michigan. Ms. Friend shall make the children available and, if required, herself available, for consult with Mr. Alsterberg, and all parties shall follow the counseling regimen established by him.

The trial court's finding that counseling with Sommers had been ineffective in repairing the children's relationship with Alexander Friend is not against the great weight of the evidence. The record demonstrates that, throughout the trial court proceedings, the children were extremely reluctant to visit Alexander Friend. In addition, Brenda Cadwell, the Friend of the Court caseworker, testified that despite the children's good relationship with Sommers, no progress had been made regarding visitation with Alexander Friend and that the prospects were getting worse.

Moreover, the trial court did not commit a palpable abuse of discretion by ordering the parties and the children to participate in counseling with Dr. Alsterberg. Alexander Friend testified that he sought out Dr. Alsterberg because his specialty is reconnecting parents and children, and that there were no such specialists closer to Houghton, where Alexander Friend was living at the time. Alexander Friend also believed that Macomb County would be a good location to participate in counseling with the children because they could travel there via direct flights from Charleston, South Carolina. Although Julia Friend argues that she cannot afford to pay for trips to Macomb County for the purpose of counseling, following entry of the judgment of divorce, the trial court ordered Alexander Friend to pay for all travel expenses and meals for Julia Friend and the children to facilitate counseling with Dr. Alsterberg.

The trial court also opined that after initially consulting with Dr. Alsterberg, if he determines that there exists an appropriate counselor closer in proximity to the children's home, then the parties should follow Dr. Alsterberg's recommendations in this regard. Therefore, the trial court did not commit a palpable abuse of discretion, even considering that Alexander Friend no longer lives in Michigan. Because the trial court's findings of fact are not against the great weight of the evidence, the court did not commit a palpable abuse of discretion, and the court did not make a clear legal error on a major issue, we affirm the trial court's parenting time determination.[38]

VI. Judicial Bias

Julia Friend contends that Judge Charles Goodman, the presiding trial judge in the proceedings below, is biased and prejudiced and, therefore, this case should be reassigned to a different judge. Julia Friend failed to preserve this issue for appellate review by objecting to the

[38] MCL 722.28; *Berger*, *supra* at 716.

Judge Goodman's conduct or otherwise raising the issue in the trial court.[39] Moreover, Julia Friend failed to properly present this issue for appellate review by including it in her statement of questions presented in her brief on appeal.[40] In any event, Julia Friend's argument lacks merit because it is based solely on the fact that she disagrees with Judge Goodman's rulings.[41] She fails to show that Judge Goodman's rulings evidence a deep-seated favoritism or antagonism toward her.[42]

Affirmed.

/s/ William C. Whitbeck
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher

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[39] MCR 2.003(C); *Illes v Jones Transfer Co*, 213 Mich App 44, 56 n 2; 539 NW2d 382 (1995).

[40] MCR 7.212(C)(5); *Health Care Ass'n Workers Compensation Fund v Director of the Bureau of Worker's Compensation, Dep't of Consumer & Industry Services*, 265 Mich App 236, 243; 694 NW2d 761 (2005).

[41] See *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 597-598; 640 NW2d 321 (2001).

[42] *Id*.